

Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 CIAE-00 DODE-00 PM-04 H-01 INR-07 L-03
NSAE-00 NSC-05 PA-01 PRS-01 SP-02 SS-15 USIA-06
ACDA-07 IO-13 MCT-01 SY-05 DHA-02 COME-00 SCA-01
JUSE-00 SAJ-01 CU-02 EB-08 TRSE-00 /098 W
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P R 121237Z FEB 77
FM AMEMBASSY DUBLIN
TO SECSTATE WASHDC PRIORITY 8815
INFO AMEMBASSY BONN
AMEMBASSY BRUSSELS
AMEMBASSY COPENHAGEN
AMEMBASSY THE HAGUE
AMEMBASSY LONDON
AMEMBASSY LUXEMBOURG
AMEMBASSY PARIS
AMEMBASSY MOSCOW
AMEMBASSY ROME
USMISSION NATO BRUSSELS
USMISSION EC BRUSSELS
AMCONSUL STRASBOURG

C O N F I D E N T I A L SECTION 1 OF 2 DUBLIN 337

E. O. 11652: XGDS-1
TAGS: PINS SHUM UK EI CSCE
SUBJ: UK-IRISH DIFFICULTIES OVER TORTUE, ANTI-TERRORISM CHARTER

REF: (A) STRASBOURG 26, (B) DUBLIN 76 A-89, (C) DUBLIN
257 (NOTAL)

1. SUMMARY: THE NEVER-FAR-BELOW-THE-SURFACE TENSION BETWEEN
IRELAND AND BRITAIN HAS SUDDENLY BOILED UP IN A BITTER AND
CONTENTIOUS AFFAIR HAVING TO DO WITH THE IRISH PRESSING
THE "TORTUE" CASE AGAINST THE BRITISH AT STRASBOURG.
CALLAGHAN HAS NOW APPARENTLY RAPPED IRELAND FOR NOT SIGNING
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THE COUNCIL OF EUROPE ANTI-TERRORIST CONVENTION. ON THE
IRISH SIDE BOTH THESE ISSUES HAVE MUCH TO DO WITH THE LEGAL
MIND OF THE IRISH ATTORNEY GENERAL AND THE POLITICAL INSTINCTS
OF THE PRIME MINISTER. END SUMMARY.

2. THE IRISH ARE REACTING STRONGLY TO CALLAGHAN'S FEBRUARY
10 STATEMENT DURING QUESTION TIME IN COMMONS THAT HE WOULD

EXERT "MAXIMUM PRESSURE" TO GET THE IRISH TO SIGN THE COUNCIL OF EUROPE ANTI-TERRORIST CONVENTION (REF A). THE PRESS AND POLITICIANS HERE SEE A LINKAGE BETWEEN CALLAGHAN'S STATEMENT AND IRELAND'S REFUSAL TO DROP ITS "TORTURE CASE" AGAINST THE UK AT STRASBOURG. SOME PAPERS HERE, THROWING IN THE CURRENT DISPUTE WITH THE UK OVER ROCKALL ISLAND (SIC) (REF C) ARE TALKING OF "STRAINED RELATIONS" AND A "DIPLOMATIC WAR". THERE IS MUCH HYPERBOLE IN THIS, AND WE EXPECT THIS FLAP TO DIE DOWN, BUT THERE IS NO DOUBT THAT THE IRISH GOVERNMENT IS ANNOYED. THE CABINET HELD A REGULARLY SCHEDULED MEETING FEBRUARY 11 AND ISSUED A TERSE STATEMENT: "THE DETERMINATION OF THE IRISH GOVERNMENT TO DEAL WITH TERRORISM IS WELL KNOWN AND NEEDS NO FURTHER ELABORATION." THE OPPOSITION FIANNA FAIL WAS MUCH MORE EXPLICIT IN ITS CONDEMNATION.

3. REF B EXPLAINS THE LEGAL AND POLITICAL REASONS WHY THE IRISH DID NOT SIGN THE ANTI-TERRORIST CONVENTION. SINCE THE DISPATCH OF THAT AIRGRAM WE HAVE LEARNED MORE ABOUT IRELAND'S DIFFICULTIES WITH THE CONVENTION. A SENIOR MFA OFFICIAL DEALING WITH THE MATTER SHOWED US THE CORRESPONDENCE BETWEEN FOREIGN MINISTER FITZGERALD AND THE FOREIGN MINISTERS OF THE OTHER EIGHT. THE CORRESPONDENCE REVEALED: (A) IRISH PERPLEXITY OVER WHY THE OTHER EIGHT WOULD NOT AGREE TO INCLUDE AN ALTERNATIVE TO EXTRADITION, I.E. MANDATORY TRIAL FOR A TERRORIST OFFENSE" IN LOCO CORPORE." ONLY A FEW OF THE OTHER EIGHT EVEN GAVE REASONS WHY THIS ALTERNATIVE WAS UNACCEPTABLE. THE BRITISH GAVE NO REASONS AT ALL, MERELY SAYING IT WAS "NOT SUITABLE". THE IRISH POINTED OUT THAT MOST OF THE EIGHT HAD CONFIDENTIAL

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MORE LEGAL DIFFICULTIES WITH EXTRADITION THAN WITH THE ALTERNATIVE; (B) THE OTHER EIGHT, INCLUDING THE UK, ALL HAD STATED THAT THEY UNDERSTOOD THE IRISH PROBLEM. THERE WAS NO HINT OF THE MOVE THAT CALLAGHAN IS APPARENTLY CONSIDERING.

4. OUR SOURCE GAVE US FURTHER BACKGROUND ON THE IRISH DECISION NOT TO SIGN THE CONVENTION. HE SAID THAT DIPLOMATIC SOUNDINGS INDICATED THAT AT LEAST FOUR OF THE COUNCIL MEMBERS HAD INDICATED THAT THEY WOULD SIGN THE CONVENTION BUT NOT RATIFY, OR AT LEAST RATIFY WITH CRIPPLING RESERVATIONS. HE DID NOT IDENTIFY THE COUNTRIES BUT MADE IT CLEAR THAT FRANCE WAS ONE OF THEM. AN INTERNAL GOI DEBATE ENSUED BETWEEN JUSTICE MINISTER COONEY, WHO URGED SIGNING AND NOT RATIFYING, AND ATTORNEY GENERAL COSTELLO, WHO THOUGHT SUCH A COURSE WOULD BE "SICKENING HYPOCRISY." APPARENTLY FOREIGN MINISTER FITZGERALD DID NOT HAVE STRONG FEELINGS EITHER WAY (A RARITY), AND IT WAS REFERRED TO THE PRIME MINISTER, WHO DECIDED IN FAVOR OF NOT SIGNING. (COSGRAVE HAS DEEP RESPECT FOR COSTELLO, SON OF A FORMER PRIME MINISTER,

AND VERY MUCH OF A LEGALIST.) COSGRAVE ALSO HAD AN EYE ON THE
UPCOMING ELECTION; EXTRADITION FROM THE REPUBLIC OF NORTHERN
IRELAND CATHOLICS TO BE TRIED BEFORE NORTHERN IRELAND COURTS
IS STILL NOT PUBLICLY ACCEPTED HERE. JUDICIAL BIAS IN NORTHERN
COURTS IS, RIGHTLY OR WRONGLY, A SHIBBOLETH HERE. THE
EMBARRASSMENT IN STRASBOURG WOULD NOT DO ANY HARM IN TERMS OF
DOMESTIC POLITICS. OUR SOURCE CLAIMS THAT THE BRITISH WERE
THOROUGHLY COGNIZANT OF ALL OF THESE FACTORS.

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5. THE LEGAL, CONSTITUTIONAL REASONING BEHIND IRELAND'S
REFUSAL TO SIGN IS SET OUT IN REF A. OUR SOURCE FURTHER
TOLD US THAT TWO INDEPENDENT, REPUTABLE LEGAL SCHOLARS FROM

OUTSIDE (ONE SCANDINAVIAN AND ONE DUTCH) WERE BROUGHT IN PRIOR TO THE IRISH DECISION AND ADVISED THAT SIGNING THE CONVENTION WOULD BE IN CLEAR VIOLATION OF THE IRISH CONSTITUTIONS CLAUSE ABOUT ADHERING TO INTERNAL LAW IN EXTRADITION MATTERS.

6. INTERESTINGLY, IN THE TORTURE-HUMAN RIGHTS ISSUE CURRENTLY EMBROILING IRISH-UK RELATIONS THE IRISH DECISION TO PROCEED AND NOT DROP THE CASE BEFORE THE COURT OF HUMAN RIGHTS IS AGAIN A MIXTURE OF COSTELLO'S CONFIDENTIAL

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STUBBORN LEGALISM AND COSGRAVE'S EVER-ALERT POLITICAL ANTENNAE. THE BRITISH EXASPERATION IS UNDERSTANDABLE. THEY HAVE PUBLICLY ADMITTED THEIR GUILT AND SAID THEY WOULD NOT DO IT AGAIN, AND ALSO COMPENSATED AT LEAST MOST OF THE TORTURE VICTIMS. COSTELLO ARGUES THAT WESTERN JURISPRUDENCE CALLS FOR PUNISHMENT OF THE GUILTY, AND COMPENSATION OF VICTIMS IS NO SUBSTITUTE. ALSO, HE BELIEVES IT TO BE A BAD PRECEDENT FOR THE COURT OF HUMAN RIGHTS TO DROP A CASE IN MID-CAREER JUST AS IT IS ESTABLISHING NEW AND RATHER IMPORTANT PRINCIPLES IN THE HUMAN RIGHTS FIELD. COSGRAVE MAY WELL FEEL THAT IRELAND'S TENACITY IN REFUSING TO DROP THE CASE IS HELPFUL TO HIS OVER-ALL PRE-ELECTION STRATEGY. PULLING THE POOR OLD LION'S TAIL STILL DOES A POLITICIAN NO HARM HERE. THE BRITISH CHARGE THAT PRESSING THE CASE GIVES AID AND COMFORT TO THE IRA IS A POINT OF IRRITATION HERE, WHICH TO THE IRISH AGAIN ILLUSTRATES WHAT THEY BELIEVE TO BE UK MISUNDERSTANDING OF THE "IRISH PROBLEM." THEY FAIL TO UNDERSTAND HOW PUTTING A STOP TO THE TORTURE OF DETAINEES CAN "GIVE AID AND COMFORT TO THE IRA.

7. CSCE CONTEXT -- ONE IRISH NEWSPAPER REPORTS THAT THE HEARINGS IN STRASBOURG HAVE BEEN RECEIVING EXTRAORDINARY ATTENTION FROM THE SOVIET MEDIA. A RUSSIAN TV CREW REPORTEDLY FILMED ALL OF THE PROCEEDINGS. ALSO PRESENT WERE REPS FROM TASS, PRAVDA AND IZVESTIA. THE PAPER SPECULATED THAT THE RUSSIANS ARE GATHERING DOCUMENTATION TO BE USED AT BELGRADE.

8. COMMENT: THE TRADITIONAL TENSION BETWEEN THE TWO ISLANDS IS NEVER VERY FAR BENEATH THE SURFACE, AND HAS ONLY BEEN KEPT DOWN WITHIN THE LAST FEW YEARS BY PERSISTENT STATESMANSHIP ON BOTH SIDES. IT IS SIGNIFICANT THAT FOREIGN MINISTER FITZGERALD HAS BEEN AWAY ALL WEEK WHILE THIS UNFORTUNATE FLURRY HAS BUILT UP. HE HAS BEEN INVOLVED IN THE PRESIDENTIAL OFFICIAL VISIT TO THE FRG. IN OUR OPINION THE FLAP OVER THE STRASBOURG CONFIDENTIAL

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PROCEEDINGS AND THE ANTI-TERRORIST CONVENTION IS UNNECESSARY,
AND SHOULD BLOW OVER SOON. THE DISAGREEMENT OVER ROCKALL,
HOWEVER, HAS TO DO WITH A FUNDAMENTAL CONFLICT OF ECONOMIC
INTEREST AND WILL BE STRONGLY, BUT WE HOPE WITH RESTRAINT,
CONTESTED. CURLEY

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